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9 *Attorneys for Court-Appointed Monitor,*
Thomas W. McNamara

11 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

13 THOMAS W. MCNAMARA, as the Court-
Appointed Monitor for AMG Capital
14 Management, LLC; BA Services LLC; Black
Creek Capital Corporation; Broadmoor Capital
15 Partners, LLC; Park 269, LLC; C5 Capital
LLC; DF Services Corp.; DFTW Consolidated
16 [UC] LLC; Impact BP LLC; Level 5 Apparel
LLC; Level 5 Capital Partners LLC; Level 5
17 Eyewear LLC; Level 5 Motorsports, LLC;
Level 5 Scientific LLC; NM Service Corp.
18 (f/k/a/ National Money Service); PSB Services
LLC; Real Estate Capital LLC (f/k/a/ Rehab
19 Capital I, LLC); Sentient Technologies; ST
Capital LLC; Westfund LLC; Eclipse
20 Renewables Holdings LLC; Scott Tucker
Declaration of Trust, dated February 20, 2015;
21 West Race Cars, LLC; and Level 5
Management LLC; and their successors,
22 assigns, affiliates, and subsidiaries,

23 Plaintiff,

24 v.

25 WHAMTECH, INC., a Delaware Corporation,

26 Defendant.

Case No.

**MONITOR'S COMPLAINT FOR
BREACH OF CONTRACT**

JURY TRIAL DEMAND

1 Plaintiff, Thomas W. McNamara (“Plaintiff” or “Monitor”), in his capacity as the Court-
 2 appointed Monitor, hereby brings the following Complaint against WhamTech, Inc.
 3 (“WhamTech”), and alleges the following:

4 **PARTIES**

5 1. Plaintiff is the Court-appointed Monitor in the related case *Federal Trade*
 6 *Commission v. AMG Services, Inc., et al.*, 2:12-cv-00536-GMN (VCF) (D. Nev.) (“*FTC v. AMG*
 7 *Services*”), appointed by the Order Appointing Monitor and Freezing Assets entered
 8 November 30, 2016 (ECF No. 1099) (the “Monitor Order”). A true and correct copy of the
 9 Monitor Order issued in *FTC v. AMG Services* is attached as **Exhibit A** and incorporated by
 10 reference. The Monitor Order directs the Monitor, *inter alia*, to preserve the value of the assets
 11 in the Monitorship Estate and authorizes the Monitor, *inter alia*, to institute actions to preserve or
 12 recover those assets. *See id.* at 12.

13 2. The Monitor Order defines the Monitorship Estate to include, *inter alia*, all assets
 14 of Scott Tucker (the individual defendant in *FTC v. AMG Services*) (“Tucker”) and all assets of
 15 the “Monitor Entities” which are identified to include: the corporate defendants named in *FTC v.*
 16 *AMG Services* (AMG Capital Management, LLC (“AMG Capital”), Level 5 Motorsports, LLC
 17 (“Level 5”), Black Creek Capital Corporation (“Black Creek”), and Broadmoor Capital Partners,
 18 LLC (“Broadmoor Capital”)); the corporate relief defendant named in *FTC v. AMG Services*
 19 (Park 269, LLC (“Park 269”)); and multiple Tucker related and controlled entities: BA Services
 20 LLC (“BA Services”), C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC,
 21 Impact BP LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC,
 22 Level 5 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service) (“NMS”), PSB
 23 Services LLC, Real Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST
 24 Capital LLC, Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of
 25 Trust, dated February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC, and their
 26 successors, assigns, affiliates, and subsidiaries.

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3. Defendant WhamTech is a corporation organized and existing under the laws of the state of Delaware, with a current principal place of business at 5440 Harvest Hill Road, Suite 175, Dallas, TX 75230.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter under 28 U.S.C. § 754, 28 U.S.C. § 1345, and 28 U.S.C. § 1367(a), and the doctrines of supplemental and ancillary jurisdiction. *See S.E.C. v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004) (“the receiver’s complaint was brought to accomplish the objectives of the Receivership Order and was thus ancillary to the court’s exclusive jurisdiction over the receivership estate”).

5. Venue in the District of Nevada is proper pursuant to 28 U.S.C. § 1391. Additionally, the Court retained jurisdiction of this matter for all purposes and appointed the Monitor on November 30, 2016 and this proceeding is supplemental to *FTC v. AMG Services*. *See Haile v. Henderson Nat’l Bank*, 657 F.2d 816, 822 n.6 (6th Cir. 1981) (“[W]here jurisdiction is ancillary, the post-jurisdictional consideration of venue is ancillary as well.”).

6. The Court may exercise personal jurisdiction over the Defendant pursuant to 28 U.S.C. § 1692 because the funds sought to be recovered are assets of the Monitorship Estate under the Court’s Orders issued in *FTC v. AMG Services*.

ALLEGATIONS COMMON TO ALL COUNTS

7. One of plaintiff’s duties as Court-appointed Monitor is to collect money due or owing to Monitor Entities, including Black Creek.

8. Defendant WhamTech borrowed \$1,150,000 from Monitor Entity Black Creek, and repeatedly defaulted on promises to pay.

9. On or about October 3, 2008, WhamTech and Black Creek executed a promissory note payable to Black Creek in the original principal amount of \$1,000,000 (“Note 1”), due October 3, 2010. A true and correct copy of Note 1 is attached as **Exhibit B** and incorporated by reference.

10. On or about June 25, 2009, WhamTech and Black Creek executed a second promissory note payable to Black Creek in the original principal amount of \$150,000 (“Note 2”),

1 due October 9, 2009. A true and correct copy of Note 2 is attached as **Exhibit C** and
2 incorporated by reference.

3 11. On or about February 15, 2010, WhamTech and Black Creek executed an
4 “Extension of Promissory Note” (the “Extension”), extending Note 2’s due date to April 9, 2010.
5 A true and correct copy of this Extension is attached as **Exhibit D** and incorporated by reference.

6 12. On or about January 1, 2011, WhamTech and Black Creek executed an
7 “Extension and Modification of Promissory Notes Agreement” (the “Extension and
8 Modification”) restating the “total principal indebtedness outstanding” under Notes 1-2 and the
9 Extension as \$1,662,125.07 and setting the following payment schedule: \$100,000 due January
10 31, 2011, \$454,042 due March 31, 2011, \$603,763.13 due June 31, 2011, and \$579,178.77 due
11 September 30, 2011. Under paragraph 5 of the Extension and Modification, in exchange for the
12 consideration provided (which included forbearance from suit and extension of payment due
13 dates), WhamTech “waives the right to plead any and all statutes of limitation as a defense to any
14 demand on the Notes or agreement to pay the same, and agrees to pay all costs of collection
15 when incurred, including reasonable attorneys’ fees whether or not a judicial action is
16 commenced by Lender.” A true and correct copy of this Extension and Modification is attached
17 as **Exhibit E** and incorporated by reference.

18 13. On or about November 15, 2017, WhamTech and Black Creek (through the court-
19 appointed Monitor) executed an Addendum to Notes 1-2 (as amended and extended by the
20 Extension, and the Extension and Modification), restating the amount due as \$2,913,392.33, and
21 extending the due date to March 31, 2018. A true and correct copy of this Addendum is attached
22 as **Exhibit F** and incorporated by reference.

23 14. On or about February 2, 2011, WhamTech provided Black Creek a \$100,000
24 check, which was not honored when presented for payment (i.e., it “bounced”). The only
25 payment actually made by WhamTech was \$80,000 on or about February 11, 2011 – a payment
26 which itself fell \$20,000 short of the first (and smallest) installment payment WhamTech
27 promised to make only one month before.

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15. Despite numerous reminders, notices of default, and accommodations of requests for extensions, Defendant WhamTech has failed to make full payment on the debt owed under Notes 1-2, as amended and extended by the Extension, the Extension and Modification, and the Addendum.

COUNT 1

BREACH OF CONTRACT – NOTE 1

16. Plaintiff repeats and realleges the allegations of each and every one of the prior paragraphs, inclusive, as if fully set forth herein.

17. Note 1, amended and extended as set forth above, is a valid and enforceable contract, supported by good and valuable consideration. Plaintiff substantially performed all material obligations under Note 1, and has satisfied any and all conditions precedent to bringing this claim, or in the alternative, any and all conditions precedent have been waived.

18. Note 1 matured no later than September 30, 2011, the last due date under the Extension and Modification. A further extension under the Addendum matured no later than March 31, 2018.

19. Defendant WhamTech is in default and has materially breached Note 1 by failing and refusing to pay the amounts due and owing.

20. Plaintiff has suffered damages as a direct and proximate result of the breach. Pursuant to the terms of Note 1, WhamTech agreed to pay all costs and fees incurred by plaintiff in collecting amounts due under Note 1 including, without limitation, attorneys' fees and expenses Plaintiff has incurred, and will continue to incur, attorneys' fees and expenses collecting the amounts owed under Note 1.

COUNT 2

BREACH OF CONTRACT – NOTE 2

21. Plaintiff repeats and realleges the allegations of each and every one of the prior paragraphs, inclusive, as if fully set forth herein.

22. Note 2, amended and extended as set forth above, is a valid and enforceable contract, supported by good and valuable consideration. Plaintiff substantially performed all

1 material obligations under Note 1, and has satisfied any and all conditions precedent to bringing
2 this claim, or in the alternative, any and all conditions precedent have been waived.

3 23. Note 2 matured no later than September 30, 2011, the last due date under the
4 Extension and Modification. A further extension under the Addendum matured no later than
5 March 31, 2018.

6 24. Defendant WhamTech is in default and has materially breached Note 2 by failing
7 and refusing to pay the amounts due and owing.

8 25. Plaintiff has suffered damages as a direct and proximate result of the breach.
9 Pursuant to the terms of Note 2, WhamTech agreed to pay all costs and fees incurred by plaintiff
10 in collecting amounts due under Note 2 including, without limitation, attorneys' fees and
11 expenses Plaintiff has incurred, and will continue to incur, attorneys' fees and expenses
12 collecting the amounts owed under Note 2.

13 **JURY DEMAND**

14 The Monitor demands a trial by jury.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Monitor respectfully prays for judgment in his favor and against
17 Defendant WhamTech as follows:

18 1. A money judgment calculated as follows: \$2,913,392.33 as of March 31, 2018,
19 plus pre- and post-judgment interest, calculated pursuant to Notes 1-2 at the
20 default rate of 18%;

21 2. For attorneys' fees, expenses, and costs; and

22 For such other and further relief as the Court may deem proper.

23 Dated: July 20, 2018

McNAMARA SMITH LLP

24 By: /s/ Edward Chang

25 Edward Chang
26 Attorneys for Court-Appointed Monitor,
27 Thomas W. McNamara
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